

S787M/00040

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE

DIANE H. MONTGOMERY,

Plaintiff,

V.

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY

Defendant.

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Civil Action Number: 2:17-cv-02005

## NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §1446, Defendant, State Farm Mutual Automobile Insurance Company (“State Farm”), hereby files this Notice of Removal removing this case from the Circuit Court of Shelby County, Tennessee, Case No. CT-004207-16, where it is currently pending, to the United States District Court for the Western District of Tennessee. This cause is removable pursuant to 28 U.S.C. § 1332, in that Plaintiff’s claims invoke the Court’s diversity jurisdiction and the amount in controversy exceeds the statutorily required \$75,000.00. In support of removal, State Farm respectfully shows the Court as follows:

## INTRODUCTION

1. State Farm Fire and Casualty Company is a foreign corporation incorporated in the State of Illinois and whose principal place of business is in Bloomington, Illinois.
2. Plaintiff, Diane H. Montgomery, is a resident of the State of Tennessee.
3. Plaintiff has submitted a written demand in excess of Seventy-Five Thousand Dollars (\$75,000).

4. The United States District Court for the Western District of Tennessee is the federal judicial district embracing the Circuit Court of Shelby County, Tennessee, where this suit was originally filed. Venue is therefore proper under 28 U.S.C. §§ 81(b)(1) and 1441(a).

5. Pursuant to 28 U.S.C. §§ 1332, this civil action is removable as it invokes the federal court's diversity jurisdiction. This Court therefore has subject matter jurisdiction over this civil action, and removal is proper.

### **PROCEDURAL HISTORY**

6. Diane H. Montgomery ("Plaintiff") instituted this civil action in the Circuit Court of Shelby County, Tennessee, on October 17, 2016, arising out of a claim for benefits under State Farm Policy No. 729-023-42. A true and correct copy of all process and pleadings as served upon State Farm is attached hereto as Exhibit "A" and is incorporated herein by reference.

7. Pursuant to 28 U.S.C. 1446(d), a copy of this Notice of Removal will be filed with the Shelby County Circuit Court, and written notice will be provided to Plaintiff along with a copy of this pleading.

### **REMOVAL IS TIMELY FILED UNDER § 1446(b)**

8. "The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter." 28 U.S.C. § 1446(b)(1)

9. However, "if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(3)

10. On January 3, 2017, counsel for Plaintiff submitted a settlement demand to State Farm in the amount of \$100,000.00, which is in excess of the jurisdictional threshold for removal of a diversity action under 28 U.S.C. § 1332. As such, State Farm's removal is timely on or before February 2, 2017.

**NON-WAIVER OF DEFENSES**

11. By removing this action from Shelby County Circuit Court, State Farm does not waive any defenses available to it.

12. By removing this action from Shelby County Circuit Court, State Farm does not admit any of the allegations in Plaintiff's complaint.

**WHEREFORE, PREMISES CONSIDERED,** Defendant State Farm, by and through its counsel, desiring to remove this civil action to the United States District Court for the Western District of Tennessee, being the district and division for the county in which such civil action is pending, prays that the filing of this Notice of Removal, the giving of written notice thereof to Plaintiff, and the filing of a copy of this Notice of Removal with the clerk of the Circuit Court of Shelby County, Tennessee, shall effect the removal of said civil action to this Honorable Court. State Farm demands a jury to try the issues.

Respectfully submitted this 5<sup>th</sup> day of January, 2017.

**LEWIS, THOMASON, KING, KRIEG  
& WALDROP, P.C.**

By: s/ Jonathan L. May  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon the following listed person, via U.S. Mail, postage pre-paid, this the 5<sup>th</sup> day of January, 2017:

R. Sadler Bailey  
*Counsel for Plaintiff*  
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s/ Jonathan L. May \_\_\_\_\_

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